

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

UNITED STATES OF AMERICA

PLAINTIFF/RESPONDENT

v.

No. 2:07-cr-20040-1

DARRELL JAN BENNETT

DEFENDANT/PETITIONER

O R D E R

Currently before the Court is Petitioner's Second Motion to Set Aside or Vacate Conviction Pursuant to 28 U.S.C. § 2255 (doc. 70). Also before the Court is the Government's Response (doc. 71).

Petitioner moves to vacate his conviction because the conduct alleged in the Indictment does not constitute a violation of the Sex Offender Registration and Notification Act ("SORNA"), and he is actually innocent of the charge.

In *Carr v. United States*, 130 S.Ct. 2229, 2242 (2010), the U.S. Supreme Court held that a conviction under SORNA for failure to register requires that travel in interstate commerce occur after the effective date of the statute.

Petitioner attached an affidavit to his motion (doc. 70-1) to support his contention that he did not engage in interstate travel after SORNA's effective date. The Government offered no contrary evidence, and agrees that Petitioner is entitled to reversal of his § 2250 conviction.

Accordingly, the Court finds that Petitioner is actually innocent of violating SORNA, and that his motion (doc. 70) should

be and is hereby GRANTED. Petitioner's conviction is hereby VACATED.

IT IS SO ORDERED this 13th day of May, 2011.

/s/ Robert T. Dawson
Honorable Robert T. Dawson
United States District Judge